

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARLIN M. ADAMS, Chapter 11 Trustee of
the Post-Confirmation Bankruptcy Estates of
CORAM HEALTHCARE CORPORATION,
a Delaware Corporation, and of CORAM
INC., a Delaware Corporation,

Plaintiffs,

v.

DANIEL D. CROWLEY, DONALD J.
AMARAL, WILLIAM J. CASEY, L. PETER
SMITH, and SANDRA L. SMOLEY,

Defendants.

Case No. 04-1565 (SLR)

**SUPPLEMENT TO OPENING BRIEF IN SUPPORT OF DANIEL D.
CROWLEY'S MOTION TO CONTINUE THE TRIAL**

June 28, 2007

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Defendant Daniel D. Crowley submits this supplement to his Opening Brief in support of his Motion to Continue the Trial (D.I. 158) because the court in the related insurance litigation pending in the District of Colorado issued two orders this week that impact the Motion to Continue the Trial (D.I. 157) filed by Mr. Crowley on June 22, 2007.

First, as set forth in the Joint Notice of Recent Court Decision (D.I. 159) filed by the parties earlier today, on June 25, 2007, the court in the related insurance action, *Genesis Insurance Company v. Daniel D Crowley and Arlin M. Adams*, Civil Action No. 05-cv-00335-WDM-PAC (D. Colo.) (hereinafter “the Insurance Action”) issued an order on the parties’ summary judgment motions. *See* Exhibit A to the Joint Notice of Recent Court Decision (Order on Motions for Summary Judgment issued by Hon. Walker D. Miller on June 25, 2007). The court found in favor of Mr. Crowley and the Trustee Arlin M. Adams, holding that (1) insurance coverage of this lawsuit was not barred because adequate notice of the claims was provided to Genesis Insurance Company within the policy period and that (2) coverage extends to acts and events occurring after the policy’s expiration on January 27, 2001, where they are based on or arising out of the alleged wrongful acts covered by the timely notices to the insurance company. *See id.* at 20. However, the district court in Colorado refused to decide on summary judgment whether Genesis is required to cover the Outside Directors for the \$9.55 million settlement they reached with the Trustee in this matter, holding that such a determination was premature because a pending case before the Colorado Supreme Court bears on this coverage question. *Id.* at 20-21. Accordingly, some issues in the Insurance Action have been resolved such that the parties have a better sense of who will bear certain costs of settlement and risks of litigation, but others remain unresolved at this time.

Second, on June 27, 2007, the court in the Insurance Action, issued a Minute Order scheduling a settlement conference before the magistrate judge on Friday, September 14, 2007 (the last business day before trial in this matter is scheduled to begin on Monday, September 17). *See* Minute Order entered by Magistrate Judge O. Edward Schlatter on June 27, 2007, attached hereto as Exhibit 1. That settlement conference presents an excellent opportunity to resolve this matter. *See generally* Opening Brief (D.I. 158) at pp. 4-5. However, given its close proximity to

the beginning of trial in this case, the settlement conference is unlikely to serve that purpose as the parties will be preoccupied with completing trial preparation and will have already expended time, resources, and effort preparing for trial.

Counsel for Mr. Crowley continues to assess the impact of these recent developments in the Insurance Action with respect to the Motion to Continue Trial and will discuss these issues in more detail in the reply brief.

Dated: June 28, 2007

CONNOLLY BOVE LODGE & HUTZ LLP

A handwritten signature in black ink, appearing to read 'Jeffrey C. Wisler', is written over a horizontal line.

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